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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI‘I

LIMU COALITION; and KĪLAUEA	)	CIVIL NO. 02-00521 BMK
NEIGHBORHOOD ASSOCIATION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
JAMES H. PFLUEGER; PFLUEGER	)	
PROPERTIES; and PILA‘A 400, LLC,	)	
	)	
Defendants.	)	
	)	
UNITED STATES OF AMERICA; and	)	CIVIL NO. 06-00140 BMK
DEPARTMENT OF HEALTH, STATE	)	
OF HAWAI‘I,	)	PLAINTIFFS LIMU COALITION
	)	AND KĪLAUEA NEIGHBORHOOD
Plaintiffs,	)	ASSOCIATION’S REPLY RE:
	)	PLAINTIFF UNITED STATES OF
v.	)	AMERICA’S MOTION TO ENTER
	)	CONSENT DECREE; CERTIFICATE
JAMES H. PFLUEGER; PFLUEGER	)	OF SERVICE
PROPERTIES; and PILA‘A 400, LLC,	)	
	)	Date: June 16, 2006
Defendants.	)	Time: 2:30 p.m.
	)	Judge: Honorable Barry M. Kurren

PLAINTIFFS LIMU COALITION AND KĪLAUEA NEIGHBORHOOD  
ASSOCIATION'S REPLY RE: PLAINTIFF UNITED  
STATES OF AMERICA'S MOTION TO ENTER CONSENT DECREE

Pursuant to Local Rule 7.9 of the United States District Court for the District of Hawai'i, Plaintiffs Limu Coalition and Kīlauea Neighborhood Association (collectively, "the Citizens") reply to those aspects of Defendants James H. Pflueger, Pflueger Properties, and Pila'a 400, LLC's June 5, 2006 Memorandum in Opposition to Plaintiffs' Joint [Proposed] Order Approving Entry of Consent Decree that address matters unique to the Citizens. Specifically, the Citizens respond to Defendants' suggestion that entry of the Consent Decree would affect claims the Citizens may have with respect to Kaloko Reservoir.

To rebut the United States' and State of Hawai'i's (collectively, "the Government Plaintiffs'") argument the Consent Decree does not release non-water pollution claims regarding Kaloko Reservoir, defendants highlight the following language from the decree:

Together with the Settlement Agreement and Order in Limu Coalition, et al. v. Pflueger, et al., Civil No. 02-00521 SPK BMK (D. Haw.), this Consent Decree **resolves the claims set forth in the Citizen's [sic] complaint through the date of lodging, together with certain other claims.**

Defs' Memorandum at 9 (quoting Consent Decree at ¶ 76) (emphasis in Defs' Memorandum). Defendants' reliance on this language is misplaced, since the Citizens' lawsuit focused solely on Defendants' activities at Pīla'a makai of Kūhiō Highway. See 6/3/03 Citizens' Fourth Amended Complaint. Unlike the Government Plaintiffs, the Citizens did not allege any claims, Clean Water Act or other, involving Defendants' entirely separate activities at Kaloko Reservoir, which lies far mauka of Kūhiō Highway. The Consent Decree's discussion of the Citizens' lawsuit has no relevance to determining which of the Government Plaintiffs' claims related to Kaloko Reservoir the decree will resolve. See Consent Decree at ¶ 76 (separately discussing which of the Government Plaintiffs' civil claims are resolved).

Review of the Settlement Agreement and Order lodged on March 9, 2006 ("Agreement") confirms that entry of the Consent Decree will not affect any claims the Citizens may have regarding activities at Kaloko.

Paragraph 2 states:

This Agreement, together with the Consent Decree, resolves Plaintiffs' claims alleged in the Citizens' Suit, through the date of lodging, as well as any pendent claims related to Defendants' construction activities at Pīla'a, through the date of lodging, that Plaintiffs could have raised herein.

(Emphasis added). The Agreement thus identifies the scope of the “certain other claims” that entry of the Consent Decree and the Agreement will resolve, limiting them to pendent claims related to Defendants’ activities at Pīla‘a, not Kaloko. Consent Decree at ¶ 76; see Federal Sav. and Loan Ins. Corp. v. Ferrante, 364 F.3d 1037, 1039 (9<sup>th</sup> Cir. 2004) (no supplemental jurisdiction over non-federal claim that “forms no part of the case or controversy underlying the [federal] action”); Ruud v. U.S. Dep’t of Labor, 347 F.3d 1086, 1089 n.3 (9<sup>th</sup> Cir. 2003) (for pendent jurisdiction, non-federal claims must be “so related to claims in the action within [the district court’s] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution”) (quoting 28 U.S.C. § 1367(a); bracketed language in Ruud).

The Citizens take no position regarding whether the Court should enter either of the proposed orders that the Government Plaintiffs and Defendants have submitted with their respective papers. Regardless of the Court’s decision regarding the proposed orders, the Citizens urge the Court promptly to sign and enter the Consent Decree, a course of action that all parties to the consolidated proceedings support. The Citizens also seek entry of the Agreement.

DATED at Honolulu, Hawai‘i, June 9, 2006.

EARTHJUSTICE  
223 South King Street, Suite 400  
Honolulu, Hawai‘i 96813

By: /s/ David L. Henkin  
David L. Henkin  
Attorneys for Plaintiffs Limu  
Coalition and Kīlauea Neighborhood  
Association

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Limu Coalition, et al., v. Pflueger, et al., Civil No. 02-00521 BMK (D. Haw.); United States, et al., v. Pflueger, et al., Civil No. 06-00140 BMK (D. Haw.); PLAINTIFFS LIMU COALITION AND KĪLAUEA NEIGHBORHOOD ASSOCIATION’S REPLY RE: PLAINTIFF UNITED STATES OF AMERICA’S MOTION TO ENTER CONSENT DECREE

CERTIFICATE OF SERVICE

I hereby certify that, on June 9, 2006, a true and correct copy of the foregoing was served by the methods of service noted below on the following at their last known addresses:

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DATED: Honolulu, Hawai'i, June 9, 2006.

/s/ David L. Henkin  
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